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**IN THE  
COURT OF APPEALS OF INDIANA**

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RONNIE DRANE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A04-0503-CR-164

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Thomas Webber, Judge Pro Tempore  
Cause No. 45G03-0410-MR-12

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**September 8, 2006**

**MEMORANDUM DECISION ON REHEARING – NOT FOR PUBLICATION**

**CRONE, Judge**

The State petitions this Court for rehearing on our recent memorandum decision, *Drane v. State*, No. 45A04-0503-CR-164 (Ind. Ct. App. June 29, 2006), in which we overturned Ronnie Drane's convictions for the rape and murder of Tomorra Taylor. The State alleges that we improperly reweighed conflicting evidence and "incorrectly focused on what the State did not prove rather than what the State had proved." Appellee's Pet. for Reh'g at 4. We agree with the State's claim that we incorrectly considered as evidence one exhibit that was not actually admitted, but this was harmless error. We cannot agree with the State's additional allegations of error, which we will discuss in turn below. We grant rehearing for the limited purpose of clarifying several issues, and we affirm our original opinion.

In his appeal, Drane argued that the evidence was insufficient to sustain his convictions. As noted in our memorandum decision, we are well aware that we must not reweigh the evidence or judge the credibility of witnesses. *Drane*, slip op. at 9. We reversed Drane's convictions because our review of the evidence did not reveal substantial evidence of probative value to support them. *See id.* at 13, 14. The State argues in its petition for rehearing that "the telephone records, [Drane's] girlfriend's silver van, and the DNA profiling" proved beyond a reasonable doubt that Drane raped and murdered Taylor. Appellee's Pet. at 4-5.

First, we acknowledge, as we did in our memorandum decision, that the State presented evidence showing that Drane and Taylor talked several times on the day of her murder. The State also claimed that Taylor called someone from a gas station pay phone and that approximately five minutes later, a man in a silver van arrived to visit with her. The

State suggested at trial that the phone call and the van's arrival were linked, but it offered no evidence that Taylor called Drane from that pay phone. Drane's cell phone records, which show several other calls from Taylor that day, do not show that he received a call from a pay phone, and the pay phone records were not offered into evidence.

As for the testimony of Adrian Ross and Corporal John Jones, they were asked to compare their recollections of the van's appearance to two poor-quality photos of a van owned by Drane's girlfriend, Tiffany Copeland. *See* State's Exh. 9, 10. While the photos show a vehicle with long taillights, consistent with the testimony of Ross and Corporal Jones, they do not clearly show the van's color or rim style, two of the factors most relied upon by the State in supporting Ross's and Corporal Jones's identifications. The photos show a van that could be gray, silver, or even white, and the rims are barely visible in one photo, not at all visible in the other. One of the State's witnesses admitted that Corporal Jones's description of the van he saw near the murder scene could have described "thousands of vans[.]" Tr. at 201 (testimony of Detective Branson). Ross said that the van he observed at the gas station on the day of the murder had "nice [rims], like rims that catch people's attention[.]" but he was unable to describe their shape or style. *Id.* at 107. Further, the blurry police photos of Copeland's van prevented Ross from making a meaningful comparison between the rims on Copeland's van and his memory of the rims on the van at the gas station.

The State presented evidence that Drane had driven Copeland's van twice, once approximately one month before the murder and once in the weeks following the murder. There was no evidence, however, that Drane was driving the van on the day that Taylor was killed. In its petition, the State points out that we incorrectly considered as evidence an

invoice from the auto body shop of witness Lou Licciardone, which is dated May 27, 2002, and identifies work performed for Drane on an Oldsmobile van. Drane was cross-examined about the document, but it was never admitted into evidence. Our error was harmless, however, as the invoice was merely cumulative of Drane’s and Licciardone’s testimony that work was performed on the van on or near the date of the murder. In its petition, the State concedes that “testimony revealed that body work was done on the van sometime around May 27, 2002, but absolutely no evidence compels the conclusion that the van was unavailable to [Drane] on May 27, 2002.” Appellee’s Pet. at 7. We agree, and we did not reach or even suggest such a conclusion in our memorandum decision. Rather, we stated that the evidence showed that “work had been performed on the van—and was thus out of Drane’s possession—on *or about* May 27, 2002.” *Drane*, slip op. at 9 (emphasis added). Our point was, and is, that the State presented no evidence that Drane was driving the van on the day of the murder, or even that the van was his primary vehicle, and the evidence regarding work performed on the van raised doubt as to whether it was available to be in his possession at that time.

The State also claims that we incorrectly identified Gilbert Harper, Taylor’s boyfriend, as a “person of interest” in the investigation “even though that term was not used by the police to describe [him].” Appellee’s Pet. at 7. We direct the State to the trial transcript, which shows that Detective Branson did in fact refer to Harper as the “[f]irst person of interest” in the investigation. Tr. at 209.

In our decision, we noted our concern regarding the evidence that police did not even request a search warrant for Copeland’s van because Jones’s and Ross’s identifications—

upon which the prosecutor relied so heavily at trial—were insufficient to support a search warrant request. In fact, there was no indication that the van was ever searched in the two and one-half years between the murder and the trial, even though the State theorized that Drane raped and murdered Taylor inside it. In its petition, the State argues: “The fact that the detective believed that he could not have obtained a search warrant for the van was as likely caused by his belief that it was stale by a month after the murder as it was by this Court’s determination that the detective believed that he did not have a sufficient identification of the van to support a finding of probable cause.” Appellee’s Pet. at 8. This statement is pure speculation. Detectives Arnold and Branson clearly testified that they did not attempt to obtain a search warrant for the van because they did not have a positive identification of the van, and they mentioned nothing about staleness. *See* Tr. at 200, 381. Further, Detective Branson admitted that the description provided by Corporal Jones could have described “thousands of vans[.]” *Id.* at 201.

In sum, our position remains that the evidence—excluding the body shop invoice discussed above—is insufficient to support Drane’s conviction for murder.

In our consideration of Drane’s rape conviction, we observed that Drane admitted to having sex with Taylor on the night of the murder but denied raping her. The evidence confirmed that Drane and Taylor had a relationship prior to the night of the murder, and there was no evidence that it was a volatile one. We stated: “While we acknowledge that the trial court could have disbelieved Drane’s testimony, the State failed to present sufficient evidence to the contrary.” *Drane*, slip op. at 14. The State takes issue with that statement, claiming that we “ostensibly required the State to rebut [Drane’s] self-serving testimony in

order to allow the trial court to decline to give it credit.” Appellee’s Petition at 9. We welcome this opportunity to clarify our position. We agree that a factfinder is not required to believe a witness’s testimony even when it is uncontradicted. *See Thompson v. State*, 804 N.E.2d 1146, 1149 (Ind. 2004). The fact remains, however, that the State was required to present evidence that proved beyond a reasonable doubt that Drane raped Taylor. We conclude that the State failed to meet its burden and that there is insufficient evidence to sustain the rape conviction.

The State’s petition for rehearing is granted. We affirm our original decision in all respects, except as clarified above.

FRIEDLANDER, J., and BAILEY, J., concur.